IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH JANUARY 2007 / 5TH POUSHA, 1928

Crl.MC.No. 997 of 2005()

SC.18/1998 of ASSISTANT SESSIONS COURT, PAYYANNUR

.....

PETITIONER: ACCUSED NO.1, 7 AND 10:

---

1. MUHAMMED RIYAS @ P.V.RIYAS, S/O. KHALID,
AGED 23 YEARS,PUTHIYAVEETTIL HOUSE, NAFEESA MANZIL
PARIYARAM AMSOM, KORANPEEDIKA, KANNUR DISTRICT.

2. KALATHILE PUTHIYAPURAYIL NAZER,
S/O. ASSAINAR, AGED 23 YEARS, PARIYARAM AMSOM,
KORANPEEDIKA, KANNUR DISTRICT.

3. KALATHILE PUTHIYAPURAYIL MUSTAFA,
S/O. USMAN, AGED 20 YEARS, PARIYARAM AMSOM,
KORANPEEDIKA, KANNUR DISTRICT.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENTS: COMPLAINANT & STATE:

THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 997 of 2005

- -

Dated this the 5th day of January, 2007

O R D E R

The petitioners are accused Nos.1, 7 and 10 in a prosecution, inter alia, for offences punishable under Sections 353, 332 and 130 r/w. 149 I.P.C. The co-accused have already been tried. They have been found not guilty and acquitted. The petitioners were not available for trial and hence the case against them has been split up. The petitioners have come before this court with a prayer that the proceedings surviving against them may be quashed by invoking the powers under Section 482 Cr.P.C.

2. What is the reason for quashing the proceedings? The short contention raised by the petitioners is that the offence under Section 130 I.P.C. falls within Chapter VI of the I.P.C. and as per the provisions of Section 196(1)(a) Cr.P.C. cognizance and prosecution of the petitioner under Section 130 I.P.C. is not possible except with a previous sanction of the Central or State Government. In as much as no sanction is obtained under Section 196(1)(a), the prosecution is bad, contends the learned counsel.

3. I shall assume that no such sanction has been obtained under Section 196(1)(a) Cr.P.C. But even that is not a sufficient reason to quash the proceedings against the petitioner. Admittedly for the prosecution for the other offences alleged, no sanction is required and this contention will not cover the prosecution initiated against them for those other charges.

4. That the co-accused have been acquitted on the basis of the evidence which was available in the trial held against them is certainly not a sufficient or satisfactory reason for the absconding co-accused to claim quashing of proceedings against them, as has been made clear in the decision in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552).

5. It is submitted that charges have not been framed against the petitioners. The petitioners can certainly at the stage of arguments under Section 239/240 Cr.P.C. raise the contention that charge against them under Section 130 I.P.C. is not liable to be framed. Needless to say, the learned Magistrate must consider such contention when raised and take appropriate decision in the matter.

6. The learned counsel for the petitioners submits that warrants issued by the learned Magistrate to procure the presence of the petitioners are pending. It is prayed that direction may be issued under Section 482

Cr.P.C. to release the petitioners on bail when they appear and apply for bail before the learned Magistrate. It is certainly for the petitioners to appear before the learned Magistrate and satisfy the learned Magistrate that they have justifiable reasons for not appearing before the learned Magistrate earlier. The learned Magistrate must consider such cause on merits and pass appropriate orders. I have no reason to assume that the learned Magistrate would not do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. I may hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously on the date of surrender itself.

(R. BASANT)
Judge

tm